In the High Court of Judicature at Madras

Dated: 09/07/2004

Coram

The Hon'ble Mr. Justice V.KANAGARAJ

Second Appeal No. 563 of 1993 and Second Appeal No. 564 of 1993

1. Kannaiyan

2. Indirani ... Appellants in
both the S.As.
-vs-

1. Chinnammal
W/o. Kunithapada Pillai,
Killai Madura Kuchiapalayam
Village, ... Respondent in
Chidambaram Taluk. Both the S.As.

2. Indirani
D/o. Chinnammal ... 2nd respondent
in S.A.564/1993

Second appeals preferred under Section 100 of C.P.C. against the judgment and decree dated 18.09.1992 in A.S. Nos: 26 and 27 of 1990 on the file of the Subordinate Judge, Chidambaram, thereby confirming the judgment and decree dated 23.12.1989 in O.S. Nos: 833 of 1987 and 10 23 of 1987 on the file of District Munsif Court, Chidambaram.

!For appellants : Mr. A. Jinasenan

^For respondents : Mr. S. Krishnasamy

:J U D G M E N T

These second appeals are preferred against the judgment and decree dated 18.09.1992 in A.S. Nos: 26 and 27 of 1990 on the file of the Subordinate Judge, Chidambaram, thereby confirming the judgment and decree dated 23.12.1989 in O.S. Nos: 833 of 1987 and 1023 of 1987 on the file of District Munsif Court, Chidambaram.

2. Tracing the history of the above second appeals coming to be preferred by the plaintiff in the suit, it comes to be known that the plaintiff in O.S. No: 833 of 1987 has filed the suit for permanent injunction restraining the defendants from interfering with the plaintiff's possession of the suit schedule property for her lifetime on averments such as that the plaintiff is the second wife of one Kunjithapatham who was the real

owner of the property; that the first wife's children have obtained partition from their father and are living separately; that Kunijithapatham was living with the plaintiff; that on 6.5.1965 he executed a settlement deed in favour of the plaintiff in respect of "A" schedule property measuring 0.96 cents and further executed a lifetime settlement deed in favour of the plaintiff in respect of "B" Schedule property; that according to the settlement deed the daughters of Kunjithapatham viz. Rajalakshmi and Indirani are to get the "B" Schedule property after the lifetime of the plaintiff; that the plaintiff has sold the "A" Schedule property; that on 25.11.1972 the plaintiff, Rajalakshmi and Indirani had mortgaged the "B" Schedule property in favour of the husband of the second defendant and it was redeemed on 25.11.1981; that the plaintiff is cultivating the land; that the plaintiff is residing in the land and has been duly paying all the taxes; that the defendants threatened the plaintiff that they are going to purchase the said property from the daughters of Kunjithapatham; that the plaintiff has a right over the suit schedule property out of the settlement deed and hence, prays for a permanent injunction.

3. On the contrary, the defendants 1 and 2 filed a written statement denying that the plaintiff is the second wife of one Kunjithapatham who is the real owner of the property; that the first wife's children have obtained partition from their father and are living separately; that Kunijithapatham was living with the plaintiff; that on 6.5.1965 he executed a settlement deed in favour of the plaintiff in respect of "A" schedule property measuring 0.96 cents and further executed a lifetime settlement deed in favour of the plaintiff in respect of "B" Schedule property; that according to the settlement deed the daughters of Kunjithapatham viz. Rajalakshmi and Indirani are to get the "B" Schedule property after the lifetime of the plaintiff; that the plaintiff has sold the "A" Schedule property; that on 25.11.1972 the plaintiff, Rajalakshmi and Indirani had mortgaged the "B" Schedule property in favour of the husband of the second defendant are all false; that the said property was a common property to both Kunchithapatham and his son Kalyanasundaram; that Kunchithapatham died on 12.9.1976 without executing any Will and therefore, the suit property was partitioned orally between Kalyanasundaram and Rajalakshmi; that the said Rajalakshmi on 21.4.1987 sold an extent of 2.20 acres of land in the suit schedule property to the first defendant; that the said Kalyanasundaram also sold 2.20 acres of land in the north of the suit schedule property to the second defendant; that the defendants have a right over the suit property; that the alleged settlement deed executed by Kunjithapatham on 6.5.1965 is not true; that the plaintiff is not the legally wedded wife of Kunjithapatham and therefore, she has no right over the suit property; that the said Indirani is not at all the daughter of Kunjithapatham but she is the daughter of the plaintiff and her first husband and as such she is not entitled to the suit property as a legal heir of Kunjithapatham; that the plaintiff tresspassed into the property on May 1987; that since the plaintiff is not seeking any declaration of title, the suit is not maintainable; that the defendants have already instituted a suit in O.S. No: 1023 of 1987 against Indirani and that the plaintiff's statement that she is cultivating the suit property and that she is paying the taxes, etc. are all false and therefore, the suit has to be dismissed.

4. The defendants in O.S. No: 833 of 1987 have filed the suit

O.S. No: 1023 of 1987 against the plaintiff in O.S.No: 833 of 1987 and her daughter Indirani for permanent injunction and costs.

5. On such pleading by parties, the lower court having framed the following issues for determination of the questions involved in the suit in O.S. No: 833 of 1987, viz., (1) Whether the plaintiff is in possession of the suit property? (2) Whether the plaintiff is entitled to the relief prayed for? and (3) to what relief, if any, is the plaintiff entitled to? In the suit in O.S. No: 1023 of 1987, the following issues have been framed:(1) Whether the plaintiffs have a right over the suit "A" and "B" Schedule properties? (2) Whether the settlement deed dated 6.5.1965 is sustainable in law? (3) Whether the 1st plaintiff has a right of enjoyment over the "B" schedule property? (4) Whether the plaintiffs are entitled to re-possess the suit schedule properties? And if so, what relief? The Court below has then allowed the parties to record their common evidence, d uring which on the part of the plaintiffs and the defendants as well, they would examine three witnesses each for oral evidence and for documentary evidence the plaintiff on her side, would mark 10 documents as Exs.A.1 to A.10 in support of her case, for documentary evidence. On the part of the defendants, they would mark 10 documents as Ex. B.1 to B.10 in support of their case.

6. Learned District Munsif, Chidambaram, having traced the facts and circumstances of the case as pleaded by parties, having framed the issues as brought forth above and having appreciated the same in evidence, issue wise, had ultimately decreed the suit in O.S. No: 833 of 1987 with costs and dismissed the suit in O.S. No: 1023 of 1987 also with costs.

7. Aggrieved by the said judgment, both the parties preferred appeals in A.S.Nos. 26 and 27 of 1990 before the Court of Subordinate Judge, Chidambaram, and the said Court also tracing the facts as pleaded before the trial court and framing the points (1) Is the settlement deed dated 6.5.1965 marked as Ex.A.2 is sustainable in law? (2) Whether Ex.B.1 and B.2 are legally sustainable and on the basis of those two documents whether the defendants are entitled to the relief prayed for? and (4) to what relief, if any, both the parties are entitled to?, and appreciating the oral and documentary evidence placed on record, would dismiss the appeals, without costs, thereby confirming the judgment of the lower court, as per its judgment dated 18.09.1992 .

8. It is only against the judgment delivered by the first appellate court, both the plaintiff and the defendants, who are the appellants and respondent in the first appellate court have come forward to prefer the above second appeals on certain grounds as brought forth in the grounds of second appeals and for determination of the following substantial questions of law:-

"1. In the light of the fact that Kalayanasundaram was not a party to Ex.A.2 whether the recitals in the said documents about an alleged partition between him and his father could be held against the said Kalayanasundaram or his successor the appellants in order to reject the claims to the suit property?
2. Whether the findings of the Courts below that there was a

partition between Kalyanasundaram and his father is sustainable in law having regard to the fact that there is absolutely no valid evidence nor even an issue to this effect?
3. Having regard to the fact that the suit properties are admittedly joint family properties, whether the settlement Deed Ex.A.2 executed by the father when the son Kalyanasundaram was alive in respect of the entirety to the joint family properties in favour of Chinnammal is valid and operative in law?
4. Having regard to the fact that there is no evidence of partition between Kalyanasundaram and his father, whether the appellants would not in any event be entitled to half share in the suit properties by virtue of his purchase from two of the heirs of Natanakunjithapatham and if so, the rejection of the appellant's claim in toto is sustainable in law?"
9. During arguments, the learned counsel appearing on behalf of the appellants having traced the facts and circumstances of the case as put up by both parties respectively in O.S. Nos. 833 and 1023 of 1987 and further revealing that the trial Court decreed the first suit and dismissed the second as against which two appeals have been preferred and the first appellate Court had dismissed both the appeals thereby confirming the judgments and decrees passed by the trial Court in both the suits above and on tracing little facts, the learned counsel would ultimately point out that the deceased Kunjithapatham had two wives, the suit in O.S. No.833 of 1977 has been filed by the second wife mainly on the ground that he executed a settlement as per which 'A' schedule belongs to her absolutely and that in the 'B' schedule, she has the enjoyment for the life time. Le arned counsel also would point out that both the Courts have concurrently erred to find that the suit is bad for non-joinder of necessary parties and that the evidence has not been properly appreciated and on such factual grounds without pleading any law, the learned counsel would pray for allowing the Second Appeals setting aside the judgments and decrees passed by both the Courts below. On the part of the respondents, the learned counsel appearing on their behalf has pointed out that the sale deed in Ex.A.1 is in favour of Kalyanasundaram, the first wife's son of Kunjithapatham. The first wife's son is one of the attesting witnesses; that Chinnammal, according to the appellants is not the wife; that Indirani, daughter of Chinnammal is also not the daughter of Kunjithapatham; that in such circumstances, there is no question of nonjoinder of parties testifying the validity of Ex.A2 Settlement Deed; that subsequent events of the Settlement Deed would also indicate only that both the Courts below have arrived at the right conclusions in a concurrent manner and hence on such arguments he would seek to dismiss both the appeals as without merit.

10. However, on the part of the appellants, the learned counsel would cite a judgment reported in AIR 1965 SC 569 (Ammathayee alias Perumalakkal and another vs. Kumaresan alias Balakrishnan and others) wherein it was found that the gift of immovable ancestral property in Hindu Law by the

husband out of affection to his wife and in fulfilment of his father's wishes cannot be considered as one made for pious purpose, or be treated as 'stridhan'.

11. In consideration of the facts pleaded, having regard to

the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the suit in O.S. No.833 of 1987 has been filed praying for permanent injunction and the other suit in O.S.No.1023/1987 has been filed praying for declaration with respect to 'A' schedule suit properties to the effect that the first plaintiff was entitled to the same and for delivery of possession and further to declare the second defendant's entitlement in 'B' schedule of the suit properties and to put her in possession of the same and for the mesne profits and costs.

12. The trial Court having traced the facts and circumstances of the case as pleaded by parties and further having framed proper issues as seen in paragraph No.6 of the trial Court's judgment and permitting the parties to record their evidence in the manner known to law during which the plaintiffs and the defendants have recorded the evidence in the manner aforementioned.

13. It could be borne in mind that the plaintiffs in O.S. No.833/19 87 are the defendants in O.S. No.1023/1987 and on the vice versa. The first plaintiff in O.S. No.833/1987 and the second plaintiff in O.S. No.1023/1987 are the wives of the deceased Kunjithapatham. Even though the plaintiffs in O.S. No.1023/1987 dispute the status of the first plaintiff in O.S. No.833/1987 being the second wife of late Kunjithapatham, both the lower Courts are not in agreement with such a stand taken by them, since absolutely no evidence is made available for such an extreme pleading taken on their part and further various circumstances and documentary evidence placed on record only go to prove to the effect that the first plaintiff in O.S. No.833/1987 is the wife of late Kunjithapatham. It could be decided that both of them were the wives of late Kunjithapatham at this stage.

14. While such being the state of affairs, based on Ex.A1 Settlement Deed dated 8.5.1965, the plaintiffs in O.S. No.833/1987 seek the relief of permanent injunction restraining that the defendants therein from in any manner interfering with their peaceful possession and enjoyment of the suit schedule properties and as a counter-blast, the defendants in the said suit have come forward to file the other suit in O.S. No.1023 of 1987 against them for declaration, permanent injunction and delivery of possession and for such other reliefs. On ground that the suit properties were the family properties of Kunjithapatham and his son through the first wife that these properties fell to the share of Kunjithapatham in a family partition held in between himself and his brother, thus, the suit properties have a coating of family properties and therefore, contending that the plaintiffs in O.S. No.833/1987 are not entitled to a share of the same.

15. However, the trial Court has meticulously traced the facts and circumstances as pleaded by parties and having framed proper issues for proper consideration and permitting the parties to record evidence and appreciating the same in the manner required under law, further having a lengthy discussion on such evidence placed on record both oral and documentary and on such healthy procedures followed, the trial Court would distrust the version of the plaintiffs in O.S. No.1023/19 87 whether it is regarding their averments or the status of the suit properties or even their claims and has ultimately dismissed the suit with costs. The same Court would also find that Ex.A2

Settlement is true, valid and binding and that the plaintiff's sons is not only entitled to the same legally but also they are in possession and enjoyment of the suit properties resulting in granting the relief as sought for by them, passing a decree in their favour with costs.

16. The said decisions made in both the said suits having come to be testified before the first Appellate Court, the first Appellate Court also having followed the procedures established by law and itself tracing the facts and circumstances of the case as pleaded before the trial Court, framing its own point for consideration and having its own discussions and the evidence placed on record and would find that the trial Court was fully justified in arriving at its conclusion to decide both the suits in the manner aforementioned and would dismiss both the appeals preferred in A.S. No.26/1990 and 27/1990 but without allowing costs on those appeals; thus, passing its judgment dated 18 .9.1992 and it is the decision of both the Courts below which have come to be challenged before this Court in the above grounds of appeal and the same has also been admitted for determination of the questions of law framed therein in the name of the substantial questions of law, though they do not seem to be questions of law much less substantial in nature as they have formulated and all the four questions framed are to be answered only based on the facts and circumstances of the case and they have been well answered by both the Courts below.

17. It should be mentioned that the basis of the theory attributed by the appellants to the effect that the suit properties were the ancestral properties belonging to the late Kunjithapatham and his son has not been accepted by both the Courts below since there is absolutely no evidence to treat them as ancestral properties at all. Secondly, the status of the first respondent as the second wife of late Kunjithapatham has also been accepted by the lower Courts. Thirdly, the doubts cast on Ex.A1 Settlement Deed executed in favour of the first respondent by the late Kunjithapatham have been cleared off and both the Courts have agreed that not only the said document had been genuinely executed in favour of the first respondent but also in adherence to the recitals of the said documents that the respondents are in possession and enjoyment of the properties and therefore, easy conclusions have been arrived at both by the Court of District Munsif and the Court of Subordinate Judge to accept the case of the respondents to their prayer and to pass a decree in their favour as prayed for and to dismiss the other suit filed by the appellants at both levels below. Thus, there is absolutely no necessity on the part of this Court again to go into those questions which pertain onlt to facts which have been ultimately concluded by both the Courts below in a concurrent manner and hence the substantial questions of law framed could only be answered against the appellants and the same are decided accordingly.

V.KANAGARAJ, J

18. It is not only the decisions arrived at by both the Courts below but also the manner in which they have been arrived at falling in line with the legal requirements have been done in a proper manner fulfilling all the legal requirements and therefore, interference of this Court sought to be made into the same is neither necessary nor warranted in the circumstances of the case and hence the following decision:

In result,

(i) Both the above Second Appeals do not merit acceptance and
they become liable to be dismissed and are dismissed accordingly.
(ii) The judgments and decrees dated 18.9.1992 made in A.S.
Nos.26 and 27 of 1990 by the Court of Subordiante Judge, Chidambaram are
hereby confirmed.
(iii) However, in the circumstances of the case, there shall
be no order as to costs.

Index: yes
Internet:yes

ra/gp/asvm
To

1. The Subordiante Judge,Chidambaram. 564 of 1993